Prithipal Singh v Datuk Bandar Kuala Lumpur (Golden Arches Restaurant Sdn Bhd, Intervener)

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R1–25–85–91
WAN ADNAN J
6 APRIL 1993

Administrative Law *— Rights and liabilities of public servants — Delegation of power — Whether delegation was valid — Federal Capital Act 1960 s 4(6)*

Administrative Law *— Remedies — Certiorari — Whether decision of the respondent under s 19 of the Control of Rent Act 1966 was amenable to certiorari — Control of Rent Act 1966 s 19*

Administrative Law *— Rules of natural justice — Breach of — Failure to supply copy of intervener's application — Whether there was such a duty to supply — Whether there was a duty to give reason for decisions*

Landlord and Tenant *— Recovery of possession — Order made by respondent under s 19 Control of Rent Act 1966 — Application for certiorari to quash order — Whether decision of respondent amenable to certiorari — Control of Rent Act 1966 s 19*

On 12 February 1993, the respondent received from Golden Arches Restaurant Sdn Bhd ('the intervener') an application for recovery of possession of premises for development purposes under s 19 of the Control of Rent Act 1966 ('the Act'). One Wan Kat Few ('Mr Wan') who was the Timbalan Pengarah, Jabatan Penilaian dan Pengurusan Harta Dewan Bandaraya Kuala Lumpur exercised the powers of the respondent in respect of the application and made the order applied for. In the present application, counsel for the applicant submitted that the 'perwakilan kuasa' from the respondent to Mr Wan was invalid as it was not made by the Minister and in consequence thereof, Mr Wan had acted without jurisdiction and his order was void ab initio. The applicant also complained of a breach by the respondent of the rules of natural justice in that he was not supplied with a copy of the application made by the intervener nor with the notes and grounds of decision of the respondent. Therefore, the applicant applied for an order of certiorari to quash the order of the respondent under s 19 of the Act.

Held, dismissing the application with costs:

(1) The delegation was made under s 4(6) of the Federal Capital Act 1960 and was therefore valid.

(2) The decision of the respondent under s 19 of the Act was not amenable to certiorari and even if the rules of natural justice were applicable, the court found that there had been no breach of same by the respondent. Under s 19, there was no obligation for the respondent to supply the applicant with a copy of the application.

The duty of the respondent under s 19 was to satisfy himself that the requirements therein were satisfied and once he was so satisfied, he was bound to make the order.

(3) From the notes of evidence taken at the enquiry before the respondent, the applicant's counsel had the opportunity to peruse the application at the enquiry but no objection had been raised. In this present application, the applicant did not allege that the application before the respondent was in any way defective or not in compliance with the provisions of s 19 of the Act.

(4) As regards the absence of reasons for the decision of the respondent, the court held that such absence of reasons where there was no duty to give them could not of itself provide any support for the suggested irrationality of the decision.

[Bahasa Malaysia summary

Pada 12 Februari 1993, penentang telah menerima suatu permohonan dari Golden Arches Restaurant Sdn Bhd ('pencelah itu') untuk mendapat balik milikan harta bagi tujuan pembangunan di bawah s 19 Akta Kawalan Sewa 1966 ('Akta itu'). Seorang yang bernama Wan Kat Few ('Encik Wan') yang merupakan Timbalan Pengarah, Jabatan Penilaian dan Pengurusan Harta Dewan Bandaraya Kuala Lumpur telah menggunakan kuasa penentang berkaitan dengan permohonan itu dan telah memberi perintah yang dipohon itu. Di dalam permohonan itu, peguam pemohon telah berhujah bahawa perwakilan kuasa daripada penentang kepada Encik Wan adalah tidak sah kerana ianya bukan dibuat oleh Menteri itu dan oleh yang demikian, Encik Wan telah bertindak tanpa bidang kuasa dan perintahnya tidak sah ab initio. Pemohon juga membuat aduan mengenai perlanggaran rukun keadilan asasi oleh penentang kerana pemohon tidak diberi sesalinan permohonan yang telah dibuat oleh pencelah itu dan juga nota dan alasan penghakiman penentang. Oleh itu, pemohon telah memohon untuk suatu perintah certiorari untuk membatalkan perintah penentang di bawah s 19 Akta itu.

Diputuskan, menolak permohonan itu dengan kos:

(1) Perwakilan itu dibuat di bawah s 4(6) Akta Ibu Kota Persekutuan 1960 dan oleh itu adalah sah.

(2) Keputusan penentang di bawah s 19 Akta itu tidak boleh digagalkan oleh certiorari dan meskipun rukun keadilan asasi terpakai, mahkamah berpendapat bahawa tidak dapat perlanggaran rukun itu oleh penentang itu. Di bawah s 19, penentang tidak berkewajipan memberi pemohon sesalinan permohonan itu. Tugas penentang di bawah s 19 adalah untuk memuaskan hatinya sendiri bahawa keperluan di dalam s 19 itu telah dipenuhi dan sebaik sahaja beliau berpuas hati, beliau terikat memberi perintah itu.

(3) Dari nota keterangan yang diperolehi dari penyiasatan di hadapan penentang, peguam pemohon telah berkesempatan membaca dengan teliti permohonan di penyiasatan itu tetapi tidak

membangkitkan bantahan. Di dalam permohonan masakini, pemohon tidak mendakwa bahawa permohonan di hadapan penentang itu cacat atau tidak menurut peruntukan s 19 Akta itu.

(4) Berkaitan dengan ketidakhadiran sebab-sebab untuk keputusan penentang, mahkamah memutuskan bahawa di mana tidak terdapat kewajipan untuk memberi sebab, ketidakhadiran sebab-sebab sedemikian tidak boleh secara sendiri memberi sebarang sokongan kepada cadangan bahawa keputusan itu adalah tidak rasional.]

[*Editorial Note*: The applicant's appeal to the Supreme Court vide Civil Appeal No 02–132–92 was heard on 16 July 1993. Judgment has been reserved.]

Notes

For cases on an application for certiorari, see 1 *Mallal's Digest* (4th Ed) paras 48–160.

For cases on the rules of natural justice, see 1 *Mallal's Digest* (4th Ed) paras 366–386.

For cases on the recovery of possession of premises, see 9 *Mallal's Digest* (4th Ed) paras 1175–1179.

Cases referred to

1 *Mohamed Ashraff & Anor v Commissioner for Federal Capital, Kuala Lumpur & Anor* [1972] 2 MLJ 69 (folld)

2 *Tan Hee Lock v Commissioner for Federal Capital, Kuala Lumpur & Ors* [1973] 1 MLJ 238 (folld)

3 *Mak Sik Kwong v Minister of Home Affairs, Malaysia* [1975] 2 MLJ 168 (distd)

4 *JP Berthelsen v Director General of Immigration, Malaysia & Ors* [1987] 1 MLJ 134 (distd)

5 *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487 (distd)

6 *Lonrho plc v Secretary of State for Trade and Industry and another appeal* [1989] 2 All ER 609 (refd)

Legislation referred to

Federal Capital Act 1960 s 4(6)

Karpal Singh (*Karpal Singh & Co*) for the applicant.
Rajeswaran and *R Abraham* (*Shook Lin & Bok*) for the respondent.
PHG Singh and *Paul Chua* (*LH Chua & Co*) for the intervener.

Wan Adnan J: This is an application for an order of certiorari to quash the order of Datuk Bandar Kuala Lumpur under s 19 of the Control of Rent Act 1966 made on 14 May 1991.

On 12 February 1991, the Datuk Bandar of Kuala Lumpur received from the intervener an application for the recovery of possession of premises

known as No 163, Jalan Tuanku Abdul Rahman Kuala Lumpur for development purposes under s 19 of the Control of Rent Act 1966. Mr Wan Kat Few who was the Timbalan Pengarah, Jabatan Penilaian dan Pengurusan Harta Dewan Bandaraya Kuala Lumpur exercised the powers of Datuk Bandar in respect of the application.

According to him, with the assistance of a rent officer in his department, he made enquiries and found that the chief tenant was not Tan Buoy Kow as stated in the application but one Kwai Ying and that there were six (6) sub-tenants. A letter was then sent to the chief tenant and the sub-tenants (one of whom is the applicant) to attend a meeting on 8 May 1991. At the request of the counsel for the applicant the meeting was postponed to 14 May 1991. At the meeting which was attended by the applicant and his counsel Mr Wan said he made further enquiries. He said that as all the requirements of s 19 of the Act had been complied with he made the order applied for.

Counsel for the applicant in his written submission submitted that the 'perwakilan kuasa' (exh WKF1) from the Datuk Bandar to Mr Wan Kat Few was invalid as it was not made by the Minister. Mr Wan, according to the counsel, therefore had acted without jurisdiction and his order dated 14 May 1991 was void ab initio.

The perwakilan kuasa reads as follows:

> Saya Elyas Omar Ketua Setiausaha Kementerian Wilayah Persekutuan yang menjalankan tugas-tugas Datuk Bandar Kuala Lumpur mengikut s 4(7) Akta Ibu Kota Persekutuan 1960, dan menurut kuasa-kuasa yang telah diberikan kepada saya di bawah s 4(6) Akta Ibu Kota Persekutuan 1960 saya dengan ini memberi kuasa kepada Pengarah dan Timbalan Pengarah Penilaian dan Pengurusan Harta untuk menjalankan tugas-tugas di bawah s 18A Akta Kawalan Sewa 1966.

Section 4(6) of the Federal Capital Act 1960 states:

> Where by or under this Act or any other written law the Commissioner is empowered to exercise any powers or perform any duties he may by instrument in writing delegate, subject to such conditions and restrictions as may be prescribed in such instrument, the exercise of such powers or the performance of such duties to any person described by name or office:
>
> Provided that nothing in this section shall apply to any power to make any subsidiary legislation conferred upon him by or under this Act or any other written law.

It is clear that the delegation was made under s 4(6) and not s 4(7). The mention of s 4(7) in the perwakilan kuasa was merely to show how Elyas Omar who was at that time the Secretary General of the Ministry of the Federal Territory became vested with the powers and duties of Datuk Bandar. The delegation of power to Mr Wan Kat Few is therefore valid.

Now I have to decide whether the decision of Datuk Bandar under s 19 of the Act is amenable to certiorari.

In *Mohamed Ashraff & Anor v Commissioner for Federal Capital, Kuala Lumpur & Anor*,[1] Ong Hock Sim FJ delivering the judgment of the Federal Court said [at pp 71–72]:

> We are also in agreement with the Chief Justice that s 18A [now s 19] leaves no discretion with the commissioner upon proof of compliance with s 18A(1)(a), (b) and (c) already quoted in his judgment. In the absence of any provision as to the mode of inquiry, we are of the view that no question of failure to observe the principles of natural justice can arise. The commissioner's functions under s 18A appear to us to be purely administrative and any act pursuant thereto is not amenable to certiorari.

The above proposition was reaffirmed by the Federal Court in the case of *Tan Hee Lock v Commissioner for Federal Capital, Kuala Lumpur & Ors.*[2] Gill FJ delivering the judgment of the court said:

> It is clear from the authorities that natural justice does not mean that a person performing an administrative or ministerial act must follow the procedure of a court of law or adopt procedure analogous to that of a court of law. I do not think I can accept the submission that s 18A(2) of the Act requires the commissioner to hold any formal inquiry. What the section says is that the commissioner shall 'after making such enquiries as he thinks fit, consider such applications and make an order or refuse to make an order'. To make enquiries, to my mind, does not mean to hold a formal inquiry. The only duty of the commissioner is to see that the application conforms to the requirements of s 18A of the Act.

The counsel for the applicant urged me not to follow the above two authorities but to consider the following authorities:

(i) *Mak Sik Kwong v Minister of Home Affairs, Malaysia.*[3]
(ii) *JP Berthelsen v Director General of Immigration, Malaysia & Ors.*[4]
(iii) *Rohana bte Ariffin & Anor v Universiti Sains Malaysia.*[5]

I find that these authorities do not deal with rent control legislation. The first case dealt with the question of deprivation of citizenship, the second case was in relation to employment pass under the immigration regulations, while the third was in connection with dismissal from a position in a university. The Federal Court cases of *Mohamed Shariff Ashraff*[1] and *Tan Hee Lock*[2] decided the very issue before me now. These cases are binding authorities. It is clear from these authorities that the decision of Datuk Bandar Kuala Lumpur under s 19 of the Control of Rent Act 1966 is not amenable to certiorari.

Even if the rules of natural justice are applicable I find that there has been no breach of the same by the Datuk Bandar.

The applicant complained that he was not supplied with a copy of the application made by the intervener and with the notes and grounds of the decision of Datuk Bandar.

Under s 19 of the Act there is no obligation to supply the applicant with a copy of the application. The duty of the Datuk Bandar under the section is to satisfy himself that the requirements therein are satisfied. Once he is so satisfied he is bound to make the order. Ong CJ in his judgment (High Court judgment) in the *Ashraff* case[1] said [at pp70–71]:

> In the public interest Parliament had thought fit to put shackles upon the rights of the landlord of controlled premises to deal with his property as he deems fit. ... Section 18A is clearly one of those measures. It imposes three conditions to be fulfilled by the landlords. Once they succeed in so doing, my view is that